



MAINE REVENUE SERVICES

SALES, FUEL & SPECIAL TAX DIVISION

INSTRUCTIONAL BULLETIN NO. 39

SALE PRICE UPON WHICH TAX IS BASED

This bulletin is intended solely as advice to assist persons in determining and complying with their obligations under Maine tax law. It is written in a relatively informal style and is intended to address issues commonly faced by taxpayers with respect to determining the sale price upon which tax is based. Although bulletins issued by Maine Revenue Services (“MRS”) do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Sales and Use Tax Law is found in Part 3 of the Maine Revised Statutes Title 36. Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” on the MRS website.

Section 1811 of the Sales and Use Tax Law imposes a sales tax on the value of tangible personal property and taxable services sold at retail in this State, as well as on the value of products transferred electronically in certain circumstances. Value is measured by the sale price. Section 1764 imposes a sales or use tax on certain casual sales. Section 1861 imposes a use tax on purchases at retail sale where sales tax is not paid at the time of purchase. The amount of tax is determined by applying the tax rate to the sale price. Section 1752(14) defines the meaning of “sale price.”

This bulletin explains what must be included in the sale price on which sales or use tax liability is based.

1. IN GENERAL

A. The sale price on which sales tax is based includes:

- (1) The full price, valued in money, whether paid in money or otherwise, including the value of traded in property.
- (2) The amount charged for any services that are a part of the sale, such as assembly, alteration, or fabrication charges whether separately stated or not. (See Section 5 below.) Separately stated charges for labor or services used in installing, applying, or repairing the property sold are not subject to tax.
- (3) Federal manufacturers’ or importers’ excise taxes with respect to automobiles, tires, firearms, tobacco, liquor, sporting goods, etc., even though this federal tax is separately stated.

(Section 1752(14(A))).

B. The sale price on which sales tax is based does *not* include:

- (1) Cash discounts allowed by the seller and taken by the purchaser.
- (2) Separately stated charges for labor or services involved in installing, applying, or repairing the property sold.
- (3) Separately stated charges for transportation of goods to the purchaser by common or contract carrier or by mail. (See Instructional Bulletin No. 30 for more information).
- (4) Certain service charges in lieu of tips.
- (5) Any charge, deposit, fee or premium imposed by a law of this State, including but not limited to the Recycling Assistance Fee, the motor vehicle oil premium, the lead acid battery deposit, and the “lemon law” arbitration and consumer mediation service fees.
- (6) Certain forfeited room deposits or cancellation fees charged or collected by hotels and other persons engaged in the rental of living quarters (see Instructional Bulletin No. 32 for more information);
- (7) Any amount charged for the disposal of used tires; and
- (8) Any amount charged for a paper or plastic single-use carry-out bag.

(Section 1752(14(B)))

C. Partial or full credit may be taken by a retailer for transactions previously reported as taxable if:

- (1) A refund or credit is allowed to the purchaser pursuant to warranty.
- (2) The full purchase price is refunded to the purchaser upon return of the merchandise.

2. RETAILER TO ADD AMOUNT OF TAX TO SALE PRICE

Section 1753 provides that “the retailer shall add the amount of the tax to the sale price and may state the amount of the tax separately from the sale price of tangible personal property or taxable services on price display signs, sales or delivery slips, bills and statements that advertise or indicate the sale price of that property or those services.” If the retailer does not state the amount of the tax separately from the sale price, the retailer must include a statement on the sales slip or invoice presented to the purchaser that the stated price includes Maine sales tax. In the event a retailer does not provide its customers with a sales slip or invoice, the retailer must clearly state on display signs, menus, or other advertisements of the retailer’s products that sales tax is included in the advertised sale price.

i. Computation of sales tax. Section 1812 states that sales tax shall be added to the sale price “and when added the tax constitutes a part of the price, is a debt of the purchaser to the retailer until paid and is recoverable at law in the same manner as the purchase price.”

In sales of multiple items, the tax is calculated on the total sale price of all taxable items added together. For instance, if the sale includes six 15 cent items, tax is computed on the 90 cent sale, not on each individual 15 cent item.

A retailer computes monthly sales tax by multiplying the total sale price of all taxable sales by the applicable tax rate. A retailer may find that due to rounding, the tax due on the sales tax return is less than the actual tax collected from customers. This excess collection is known as “breakage” and may be retained by the retailer as compensation for the collection of tax.

3. TRADE-INS, CORE CHARGES AND INSTALLMENT SALES

Pursuant to the definition of “sale price,” tax applies not only to cash sales, but also to credit sales and to transactions where the sale price is paid in part or in whole by barter, rendition of services, or any other valuable consideration.

A. Trade-ins. When property is sold with an allowance being made for traded-in property, tax applies to the entire sale price, including the allowance for trade-in. Thus, if a refrigerator is sold for \$800, the customer paying \$700 in cash and \$100 by way of allowance on a traded in refrigerator, tax is based on the full sale price of \$800.

However, § 1765 of the law provides an exception to this rule. When one of the following items is traded in toward the sale price of the same kind of item, the allowance for trade-in is deducted from the sale price in computing the tax: motor vehicles, watercraft, chain saws, special mobile equipment, trailers, and truck campers. For more information on trade-in allowances, see Instructional Bulletin No. 24, “Vehicle Dealers.”

B. Core Charges. Customers who purchase property that can be reconditioned and resold by the seller are sometimes encouraged to bring their used property to the seller by the imposition of a “core charge” on the original purchase, which may then be refunded or credited to the customer when the used property is brought back to the seller. The core charge is considered part of the sale price of the new property being purchased and is subject to the sales tax.

Example: An alternator may be sold for \$80 with a core charge being stated in the amount of \$10. The total sale price subject to tax is \$90. If a used alternator is traded-in at the same time as the purchase of the new alternator, the sale price subject to tax remains at \$90 even though a \$10 credit is allowed. If the used alternator is returned to the seller at a later date and the customer is refunded the \$10 core charge, no refund of sales tax is allowed. The definition of “sale price” does not exclude an allowance of this sort, and core charges are not allowable as trade-in credits.

C. Installment and layaway sales. A sale is treated as being completed when delivery of the property is made (even if full payment has not been made at that time). With an installment sale, the property is delivered to the customer, and then the customer makes payment over time. Sales tax must therefore be collected in full when delivery is made.

In the layaway sale context where the property has not yet been delivered to the purchaser, a layaway payment is just a deposit, so tax is not collected each time a payment is made. The sale price includes the total amount of all layaway payments, but sales tax is not collected unless and until the final payment is made and the product is delivered to the purchaser. A layaway service fee is a charge for a service that is part of the sale and is therefore included in the taxable sale price when a sale is completed, but is not taxable when it is retained by the retailer after a layaway sale arrangement is cancelled. A fee charged for the cancellation of a layaway sale arrangement is not taxable.

4. CASH DISCOUNTS

The law provides that “discounts allowed and taken on sales” are not included in the “sale price.” (See § 1752(14(B-1))) Thus, if a 2% allowance is made for payment within a stated time, **and this allowance or discount is actually taken by the customer**, tax applies to the stated price less the discount, or the amount actually paid.

Example: Two customers purchase \$100 worth of taxable goods, with 2% being allowed for prompt payment. Customer A pays promptly and thus takes the 2% discount: tax is based upon a sale price of \$98. Customer B does not pay promptly and does not take the 2% discount: tax is based upon a sale price of \$100.

If interest is charged on overdue accounts, tax does **not** apply to the interest.

A. Coupons. If a retailer issues a store coupon that reduces the amount received by the retailer, the value of the coupon is a seller’s discount that is deducted from the sale price before computing the sales tax. However, a coupon issued by a manufacturer is not a seller’s discount. In the case of a manufacturer’s coupon, tax is based on the full sale price. The retailer is entitled to recover the value of the coupon from the manufacturer.

B. Rebates. Rebates provided by manufacturers to purchasers of tangible personal property are not discounts allowed between the seller and the purchaser. Sales tax is computed on the total sale price without any deduction for the manufacturer’s rebate. The fact that the rebate is assigned by the purchaser to the seller does not change this result.

C. Gift Certificates. When a person purchases a gift certificate, the person is simply exchanging cash for a form of credit. No sales tax applies to the sale of a gift certificate because no tangible personal property or taxable service is being purchased at that time. When the certificate is later redeemed, sales tax is collected at that time (unless a specific exemption applies).

When a gift certificate is purchased for less than its face value, the difference between the face value and the purchase value may be treated as a retailer discount since that value will not be recovered from any other source. When the certificate is later redeemed, the retailer discount would reduce the taxable sale price of the transaction provided the retailer is able to document or otherwise reliably establish the value paid for the certificate and is treating the difference as a retailer discount.

Example 1: Customer purchases a “Deal of the Day” certificate for use at a certain retailer, valued at \$100, for \$75. When the certificate is redeemed, the retailer, having made prior arrangements for this offer to occur, has documentation that the amount paid for the certificate was \$75. If the person redeeming the certificate purchases tangible personal property with a total stated price of \$150, \$25 of the certificate (\$100 less the amount paid of \$75) is treated as a retailer discount, reducing the taxable sale price to \$125 (\$150 - \$25). The amount paid for the certificate, \$75, is treated as cash toward payment of this transaction.

Example 2: A non-profit organization is given a \$50 certificate by a retailer free of charge to use in a raffle contest. The winner of the raffle redeems the certificate on a taxable sale valued at \$125. Provided the retailer has documentation that this certificate was provided free of charge and will not be reimbursed for the certificate value from any other source, the retailer can treat the \$50 as a retailer discount and reduce the taxable sale price to \$75 (\$125-\$50).

For more information on coupons and rebates, see Instructional Bulletin No. 25 “Coupons and Gifts”.

5. SERVICE CHARGES THAT ARE A PART OF THE SALE PRICE

The definition of “sale price” includes “any consideration for services that are a part of a retail sale.” (See § 1752(14(A-1))). However, it excludes the “price received for labor or services used in installing or applying or repairing the property sold, if separately charged or stated.” In other words, the sales tax normally applies to the full charge for the goods sold, **including any charges for services that are a part of the sale**, except for separately stated charges for installing, applying, or repairing the property sold.

Example: When a caterer prepares and serves food for a reception, the caterer’s charge covers not only the cost of the food, but also the cost of preparation and service. Tax applies to the entire caterer’s charge, since preparing and serving the food are services that are part of the sale. Even though the charges for preparation and serving are separately stated, tax still applies to these charges, since they are not charges for “installing or applying or repairing the property sold.”

A. Alteration charges. When a merchant offers goods for sale, and alters them at the customer’s request, the charges for those alterations are part of the sale price on which tax is based, whether separately stated or not.

Example: A customer selects a coat. However, certain alterations are necessary before the coat is satisfactory as a piece of wearing apparel for the customer. The merchant or someone contracted by the merchant performs the alterations and charges the customer an additional \$10 alteration fee. The alteration charges are a part of the sale price upon which tax is based, even though the alteration charges are separately stated.

B. Assembly charges. Some types of furniture and equipment are sold either on a knocked down (or unfinished), or on an assembled (or finished) basis; the assembled or finished item being priced correspondingly higher. Charges for assembling or finishing are part of the taxable sale price, whether separately stated or not.

C. Delivery charges. A cash on delivery (“COD”) charge constitutes payment for the service of collecting the purchase price from the purchaser. Handling charges, mileage charges, “wait charges,” and fuel surcharges are services that are part of the sale. All of these charges are included in the taxable sale price, whether separately stated or not.

6. OTHER CHARGES EXCLUDED FROM SALE PRICE

The definition of “sale price” excludes the following charges:

A. Charges for installing or applying or repairing the property sold, if separately stated. These charges, if separately stated, are **not** part of the taxable “sale price.” (See § 1752(14(B-4))).

Example: Completed drapes are sold by a merchant, who also installs them at the home of the customer. Sales tax applies to the full charge for the drapes, including the charge for any hardware or other tangible personal property involved in the transaction. The installation charges, however, if separately stated, are **not** part of the taxable sale price.

When a customer brings in a piece of furniture to be stained or painted, the merchant should charge tax on the price of the paint or stain, but not on the charge for applying the paint or stain, if separately stated. Note that this differs from the situation where the customer picks out the piece of furniture from the dealer’s stock, and wants it painted or stained, in which case the total charge is taxable.

In all the above cases, deduction of the service charges from the tax base depends on those charges being “separately stated.” While it is usually preferable that these charges be separately stated on the invoice to the customer, this is not essential. There must, however, be a separate statement of these charges on record somewhere, either on the statement to the customer or in the records of the vendor.

B. Transportation charges. Transportation charges are not included in the taxable “sale price” if:

- (1) The transportation in question is from the retailer’s place of business, or some other point from which shipment is made, directly to the customer; and
- (2) The transportation is by means of common carrier, contract carrier, or the United States mails; and
- (3) The transportation charges are separately stated. (As noted above, these charges need not be separately stated on the invoice, provided a separate statement is otherwise available in the records of the seller or purchaser).

(Section 1752(14(B-7))).

All three of the above conditions must be met for transportation charges to be excludible.

Example 1: Customer requests a product that must be special ordered. The retailer passes on the cost of the transportation from the manufacturer to the store. The transportation fee is part of the taxable sale price since the delivery was not directly to the customer.

Example 2: Customer purchases a large item and arrangements for delivery are made with the retailer. The retailer uses its own delivery vehicle to make the delivery and charges the customer a \$25 delivery fee. The delivery fee is not excluded from the sale price since delivery is not by means of a common or contract carrier.

A cash on delivery (“COD”) charge is not a transportation charge (see Section 5C above). Handling charges, mileage charges, “wait charges,” and fuel surcharges also do not qualify as transportation charges and are therefore included in the sale price and subject to sales tax.

A charge for delivery by the seller in its own vehicle is included in the taxable sale price if the products being sold and delivered are taxable items. If the delivery involves both taxable and exempt components (for example, a restaurant buying both food and supplies) delivery charges may be partially exempted from tax by applying a proration; however, if 10% or fewer of the items in question are taxable, the taxable portion of the transaction is considered *de minimis* and the transportation charges are excludible from the sale price.

For more information, see Instructional Bulletin No. 30 “Transportation Charges”.

C. Service charges in lieu of tips. The definition of “sale price” does not include an “amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when the amount is to be disbursed by a hotel, restaurant or other eating establishment to its employees as wages.” (See § 1752(14(B-5))).

When a customer provides a tip for an employee of a seller, the tip is not part of the sale price and is exempt from sales tax whether given directly to the employee in cash or added by the customer to a charge account, as long as the tip is provided wholly in the discretion or judgment of the customer. If added to a charge account, the tip is exempt only if the full amount of the tip is turned over to the employee by the seller.

An amount or flat percentage charged or collected in lieu of a gratuity, and designated as a service charge by the seller, is not part of the taxable sale price when all of it is disbursed by the seller to employees as wages. Otherwise, the service charge must be included in the seller’s gross receipts subject to tax even though the amount or flat percentage may be paid over in part to the employees.

D. Maintenance and service contracts. Charges for maintenance or service contracts, with the exception of contracts involving automobiles or trucks, are not part of the taxable sale price provided the contract is optional to the customer and the charge is

separately stated. See Instructional Bulletin No. 53 “Warranties, Service Contract and Maintenance Agreements” for more information.

7. RETURN OF MERCHANDISE

The definition of “sale price” excludes allowances made on defective merchandise that is returned to the retailer pursuant to warranty. (See § 1752(14(B-2))). It also excludes returned property when a full refund is given.

A. Returns Pursuant to Warranty. When an adjustment of price is made by a retailer on the return of defective merchandise that has been warranted, the adjustment may be deducted on a subsequent sales tax return of the retailer if the original sale was taxable and was reported by the retailer.

Example: A tire is sold with a 30-month warranty, with an adjustment based upon period of use. Assuming the tire was sold for \$100, with an adjustment of \$3 per month for the period by which the tire did not fail to meet the warranty. If the tire is returned for failure after 24 months, the adjusted value would be \$28 (\$100 less \$72). The purchaser would be entitled to a refund of \$28 plus sales tax on this amount. The retailer would deduct \$28 on its next sales tax return. Usually these adjustments are made as the result of an express written warranty, as in the case of an automobile tire. The warranty need not be in writing, however, since there are certain warranties that are implied by law.

While an adjustment of sales tax liability may be made when merchandise is returned pursuant to warranty, whether written or not, an adjustment cannot be made where the merchandise is returned to the retailer because the purchaser finds it to be unsatisfactory or unsuitable, not because of an express written warranty or because the merchandise is defective and so fails to meet an unwritten warranty. Unless the **full** purchase price is refunded (see Paragraph B below), no adjustment of sales tax can be made when merchandise is returned because the purchaser finds it to be unsatisfactory.

Example: A customer purchases a snow blower and after using it for a short time finds it is not powerful enough to meet the customer’s particular needs. There is neither failure to meet a written warranty nor any defect in the machine. The customer returns it to the dealer and is allowed 85% of the original purchase price as a refund. There is no adjustment permitted so far as sales tax is concerned.

B. Return of Merchandise and Refund of Full Purchase Price. When merchandise is returned by the customer and the **full** purchase price is refunded, either in cash or by credit toward other purchases, the retailer may deduct the original sale price of the item on a subsequent sales tax return if the original transaction was taxable and was reported. (See § 1752(14(B-3))). In this case, applicable sales tax would also be refunded to the customer.

If, in connection with returned merchandise, the retailer makes a standard service charge (sometimes called a “restocking fee”), the transaction will be considered as a refund of the full purchase price if the service charge is separately shown and identified

on the invoice to the customer or in the records of the retailer. The customer would be entitled to a refund of the entire sales tax paid on the original transaction.

Example: A retailer makes a standard service charge of \$1 in all cases where merchandise is returned by the customer for refund. The invoice or credit memo to the customer indicates “purchase price refunded \$30, less service charge \$1 - net \$29.” The retailer should treat this as a refund of the full purchase price and also refund the sales tax originally paid on the \$30 sale.

With the exception of a standard service charge, the retailer must refund the entire purchase price in order to qualify for this exclusion from sale price. For example, if an item has been used by the customer and the retailer therefore refunds less than the full purchase price (and the transaction does not involve an express or implied warranty), no adjustment of sales tax is permitted.

8. SALES MADE THROUGH VENDING MACHINES GENERALLY

Items sold through vending machines are retail sales. The term “vending machine” does not include a “snack box,” self-serve kiosk, or self-serve retail establishment that requires purchasers to be on their honor in paying for the selected item.

The taxable status of products sold through vending machines depends upon the overall business activity of the retailer and the type of products being sold. A retailer may be engaged in other activities besides vending machines, such as a lunch counter or a cafeteria.

A. When 50% or Less of Retail Sales are Through Vending Machines.

Vending machine operators who receive 50% or less of their gross receipts from retail sales through vending machines must report their entire vending machine sales based on the sale price. The retailer may sell products in vending machines with the sales tax amount included in the stated sale price. The retailer may include a statement on display signs or other advertisements that the price of the product includes Maine sales tax.

B. When More Than 50% of Retail Sales Are Through Vending Machines.

1. Sales of items for internal human consumption

Section 1752(5-A) defines “products for internal human consumption.” Items that come within the scope of this definition are sandwiches, chips, ice cream, candy, soft drinks, and other food items. Also included within this definition are the paper plates, cups, utensils, and packaging materials for these items. For the purposes of § 1752(5-A), chewing gum is **not** for “internal human consumption.” The term also does not include alcoholic beverages, medicines, vitamins, dietary supplements, or cigarettes.

Products for internal human consumption sold through vending machines are exempt from sales tax when the gross receipts of the vending machine operator are more than 50% of the total gross receipts from all sales of tangible personal property. (See § 1760(34)). Instead, the products are subject to use tax at the retailer's cost. Purchases of items for internal human consumption are reported as "taxable purchases" on the sales tax return if the purchaser has not paid the sales tax. This exemption from sales tax on the sale of these products applies only to items for internal human consumption.

2. Sales of other tangible personal property

Items not "for internal human consumption" are retail sales and are taxed on the sale price and should be included in "gross sales" on the sales tax return. Tax applies to the sale price of cigarettes, toys, gum, health and beauty aids, and other goods not for "internal human consumption." The retailer should purchase these items free of tax by presenting the supplier with a resale certificate. The retailer may sell products in vending machines with the sales tax amount included in the stated sale price. The retailer may include a statement on display signs or other advertisements that the price of the product includes Maine sales tax.

9. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

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